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# In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1248

MIKE GAULT AND ALLEN GAULT, *Petitioners*,

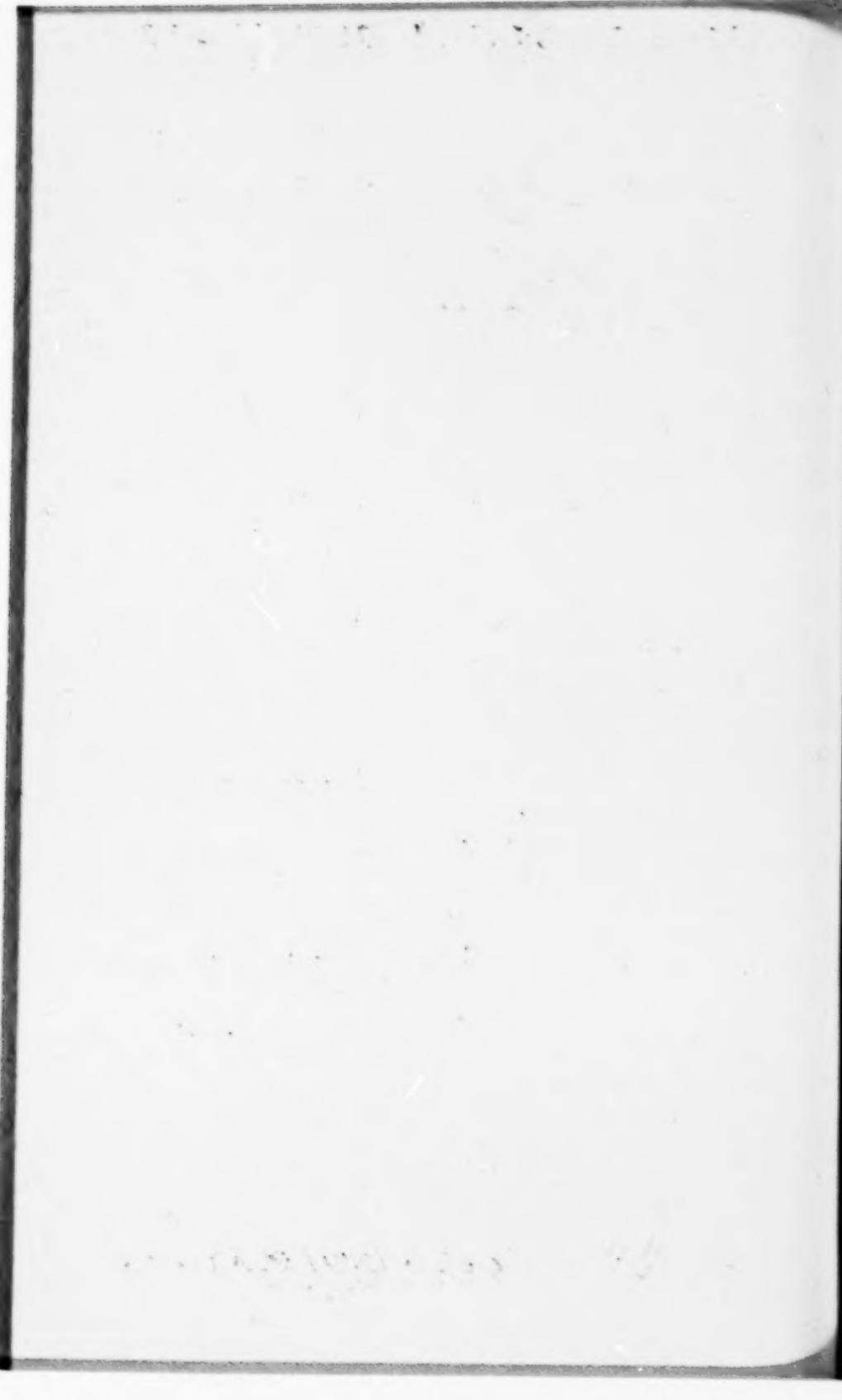
vs.

STATE OF OKLAHOMA, Ex Rel., RANDELL S. COBB,  
*Attorney General.*

## Petition in Error, and for Writ of Certiorari

WILLIAM JOSEPH HULSEY, and  
LENA HULSEY,

*Counsellors for Petitioners.*



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vs.

STATE OF OKLAHOMA, Ex Rel., RANDELL S. COBB,  
*Attorney General.*

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## **PETITION IN ERROR, AND FOR WRIT OF CERTIORARI**

MAY IT PLEASE THE COURT:

The Petitioners, Mike Gault and Allen Gault, respectfully show to this Honorable Court:

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## **SUMMARY STATEMENT OF MATTERS INVOLVED**

A.

That heretofore, to-wit: February 10, 1944, (R. 40) the petitioners were denied enlargement from the Oklahoma State Penitentiary on their petition for writ of habeas corpus, in cause No. A-10439, in the Criminal Court of Appeals of the State of Oklahoma, said court being the court of last resort in criminal matters under the provision of the Constitution and Statutes of the State of Oklahoma. That thereafter and on February 14, 1945, (R. 48) the petition for rehearing was denied by said Criminal Court of Appeals of said State of Oklahoma, and said judgment against these petitioners, denying them the writ of habeas corpus, became final in said court.

That in said proceedings the petitioners complained that while under arrest they were taken before the District Court of Custer County, Oklahoma, on the 2nd day of July, 1938, at which time an information was filed in said court (R. 5) charging them jointly with the commission of the crime of burglary, and that at the same time and in the same court an information was filed charging the petitioner, Mike Gault, with the commission of the crime of assault with intent to kill. That immediately after reading the information charging the petitioners with the commission of the crime of burglary, the Court inquired of the petitioners as to whether they wanted to plead guilty or not guilty, and they entered pleas of guilty, and the court then inquired of the petitioner, Mike Gault, as to what his plea was to the charge of assault with the intent to kill, and he plead guilty to said charge. That the court immediately entered judgment and sentence, sentencing each of the petitioners to serve a term of seven years in the Oklahoma State Penitentiary on their pleas of guilty to the charge of burglary, and immediately entered judgment and pronounced sentence against the petitioner, Mike Gault, sentencing him to serve a term of ten years in the Oklahoma State Penitentiary on the charge of the crime of assault with intent to kill, said sentence to run concurrent with the seven year sentence for the crime of burglary. And the court immediately thereafter ordered the petitioners committed to the Sheriff of Custer County, Oklahoma, to be transported at the earliest convenience to the Oklahoma State Penitentiary at McAlester. That immediately after the filing of the information against the petitioners they were arraigned and the information read to them, but no copy of the information was served on them, and the court did not inform the petitioners the nature and cause of the accusations under which they were being arraigned; did not explain to them that under the laws of the State of Oklahoma, they had the right to benefit of counsel before being

required to plead to the information, and that if they were without means to retain counsel the Court would appoint an attorney for them; that the court did not explain to them that under the laws of the State of Oklahoma, they had the right to twenty-four hours in which to plead after being arraigned, if such right was not waived; that they had two days after entering their pleas of guilty before judgment and sentence could be pronounced against them, the time to be appointed by the court, if they did not waive appointment of time for judgment and sentence against them, but the court proceeded immediately to pronounce judgment and sentence against each of the petitioners without the petitioners having waived, or having been asked to waive, any of their Constitutional and Statutory rights.

That immediately after the judgments and sentences had been pronounced against the petitioners by the District Court of Custer County, Oklahoma, on their pleas of guilty, on the 2nd day of July, 1938, the petitioners were committed to the custody of the Sheriff of Custer County to be transported to the Oklahoma State Penitentiary, and instead of the sheriff transporting the petitioners to the pententiary at McAlester, said Sheriff of Custer County transported the petitioners to Beckham County, Oklahoma, and the petitioners were taken before the District Judge of said county where an information was immediately filed charging these petitioners jointly with the commission of the crime of robbery with firearms, a capital offense under the laws of the State of Oklahoma. The petitioners were in the custody of the Sheriff of Custer County, Oklahoma, and they were immediately arraigned by the District Judge of Beckham County, on the 2nd day of July, 1938, the same day that they had been sentenced in Custer County, and the information charging them jointly with the commission of the crime of **robbery with firearms** was read to them, but no copy thereof was

served on them. The court inquired of them as to their plea to the information read to them, guilty or not guilty, and they each entered a plea of guilty to the charge, and judgment was immediately rendered against the petitioner, Mike Gault, committing him to the custody of the sheriff to be transported to the Oklahoma State Penitentiary to serve a term of thirty years, and the petitioner, Allen Gault, was immediately sentenced to serve a term of thirty-three years; that when the petitioners were brought before the District Judge of Beckham County for arraignment they were without counsel and did not know that they had the right to counsel at the expense of the State if they were unable to employ counsel; that they were without means with which to employ counsel, and the court did not inform them of the nature and cause of the accusation, or their right to counsel before they were required to plead to the information; of their rights of two days, after their pleas, to be appointed by the Court for judgment and sentence, and the appointment of time to pronounce judgment and sentence was not waived by petitioners.

That under the charge of robbery with firearms in Beckham County, Oklahoma, no warrant was ever served on the petitioners, and they were taken before the court in Beckham County by the Sheriff of Custer County and immediately required to plead to the charge of the commission of the crime of robbery with firearms, and a copy of the information with the names and post office addresses of the witnesses in chief to be used by the State was not served upon them, and their appearance before the court was only for a few moments, and they were immediately transported from Beckham County, Oklahoma, by the Sheriff of Custer County, Oklahoma, to the Oklahoma State Penitentiary at McAlester, all sentences in the two counties being pronounced against them on the same day, and that they were committed to the penitentiary on the same day, to-wit: the 2nd day of July, 1938.

**REASONS RELIED UPON FOR ALLOWANCE OF  
THE WRIT.**

B.

That the petitioners pray a review of the final decision of the Criminal Court of Appeals of the State of Oklahoma on writ of certiorari because said decision involved Federal Questions of substance adversely to the contentions of the petitioners, not in accordance with the applicable decisions of this honorable Court, and not in accordance with the Constitution and Statutes of the State of Oklahoma, and the applicable decisions of the Criminal Court of Appeals of the State of Oklahoma, in this, to-wit:

I

That the Criminal Court of Appeals erred in holding that the petitioners were not deprived of their liberty without due process of law as guaranteed to them by the Fifth Amendment of the Constitution of the United States, which in part provides:

" \* \* \* nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law \* \* \* "

II.

That the Criminal Court of Appeals erred in holding that the petitioners were not denied assistance of counsel for their defense, and that the judgments and sentences were not in violation of the Sixth Amendment of the Constitution of the United States, which provides:

"In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor and to have the assistance of counsel for his defense."

### III.

That the Criminal Court of Appeals of the State of Oklahoma in its decision denying petitioners enlargement on writ of habeas corpus, erred by in effect holding that the petitioners had not been deprived of their liberty without due process of law, as guaranteed to them by Section One of the Fourteenth Amendment of the Constitution of the United States, which provides in part:

"\* \* \* no State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction equal protection of the law."

### IV.

That the Criminal Court of Appeals erred in sustaining judgments and sentences against the petitioners in denial of their constitutional rights under Section Seven of Article II of the Constitution of the State of Oklahoma, which provdes:

"No person shall be deprived of his liberty or property without due process of law."

### V.

That the Criminal Court of Appeals erred in its decision by denying the petitioners their rights guaranteed

to them by Section Seventeen of Article II of the Constitution of the State of Oklahoma, which provides:

"No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information. No person shall be prosecuted for a felony by information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination. Prosecutions may be instituted in courts not of record upon a duly verified complaint."

## VI.

That the Criminal Court of Appeals erred in its decision which in effect denied the rights of the petitioners to equal protection of the law under the applicable decisions of said court, in violation of Section Twenty of Article II of the Constitution of the State of Oklahoma, which, in part, is as follows:

"In all criminal prosecutions, the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed; provided that the venue may be changed to some other county of the state on the application of the accused, in such manner as may be prescribed by law. He shall be informed of the nature and cause of the accusation against him and shall have a copy thereof, and be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his behalf. He shall have the right to be heard by counsel; and in capital cases, at least two days before the case is called for trial he shall be furnished with the list of witnesses that will be called in chief, to prove the allegations of the indictment or information, together with their post office addresses."

**VII.**

That the Criminal Court of Appeals erred in its decision which in effect held that the petitioners had been afforded due process of law when a time for pronouncement of judgment and sentence had not been appointed by the Court, not less than two days after the pleas of guilty were entered, in accordance with the positive statute of the State of Oklahoma, authorizing the pronouncement of judgment and sentence, and when the petitioners had not waived their right to appointment of such time, in which they might have filed a motion in arrest of judgment or filed a motion to withdraw their pleas of guilty and have entered pleas of not guilty and been afforded a jury trial.

**VIII.**

That the decision of the Criminal Court of Appeals sustaining the judgments and sentences pronounced against these petitioners should be reversed on certiorari for reason that the same does not conform to and is not in harmony with the uniform decisions of said court pertaining to trials in felony cases, and particularly trials of capital offenses, and for reason that said decision denies the petitioners equal protection of the law.

Wherefore, your petitioners respectfully pray that the decision of the Criminal Court of Appeals of the State of Oklahoma be reviewed on certiorari on the certified printed record filed, and caused to be printed at the expense of petitioners, and that said judgment of the Criminal Court of Appeals adverse to these petitioner, be by this Honorable Court reversed for reason of the errors hereinbefore set out.

That these petitioners further pray for such other and further relief in the premises as may seem to this Hon-

able Court just and proper, and your petitioners will ever  
pray.

MIKE GAULT,  
ALLEN GAULT,  
BY WILLIAM JOSEPH HULSEY AND  
LENA HULSEY,

*Counsellors for Petitioners.*